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JOSE HERNANDEZ MIGUEL

By Mr. Pohl

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EXHIBITSFOR I.D.IN EVIDENCE

25.1 through 25.4

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30.1 and 30.2

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32.3

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33.1 through 33.5

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74.1 through 74.3

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103

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106

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1 TESTIMONY ONLY

2 THE CLERK: All rise for the jury.

3 (JURORS ENTERED THE COURTROOM.)

4 THE CLERK: Thank you. You may be seated. Court is
5 now back in session.

6 THE COURT: Good morning, everyone. It looks like
7 we're ready to resume. Mr. Pohl.

8 You understand that you're still under oath?

9 THE WITNESS: Yes.

09:21AM 10 MR. POHL: Thank you, your Honor.

11 JOSE HERNANDEZ MIGUEL, RESUMED

12 DIRECT EXAMINATION, CONTINUED

13 BY MR. POHL:

14 Q. Good morning, Mr. Hernandez Miguel.

15 A. Good morning.

16 Q. When we left off yesterday, you were talking about the
17 fact that Lobo had been arrested with a gun. Do you remember
18 that?

19 A. Yes.

09:22AM 20 Q. And did you and other members of ESLs talk about that fact
21 at a clique meeting?

22 A. Yes.

23 MR. POHL: Jurors, can I ask you to pull out your
24 transcript binders. Flip to 23. Thank you.

25 Q. All right. Mr. Hernandez Miguel, I'm going to ask you --

1 I'm going to read some portions of the transcript, and I'm
2 going to ask you some questions about it. All right?

3 A. Okay.

4 Q. Casper: "Come closer. We're going to talk about an issue
5 now. That's why we are meeting. I'm going to request that
6 when we speak to one another that we do it respectfully, that
7 we choose our words carefully so that we don't offend anyone.
8 We are all dogs, dude, and it is better to lower our ears when
9 we talk to another dog so that we don't bite one another."

09:23AM 10 "So the problem is this: I got a call. Playa called
11 me, dudes, that Lobo had been arrested and he was in jail. As
12 always, we, when there's a large bill to pay, homies, we have
13 always contributed \$100 each to help the dude out somehow so
14 that he can pay or do something about the problem that he got
15 into. We have done that for several dudes that have gotten in
16 trouble, but Lobo's circumstances has been a little different
17 this time. So, dudes, I gave the \$100, and supposedly we were
18 all going to do the same. Then there are some dudes I want to
19 hear from first before giving it officially, so let's think
09:24AM 20 about it."

21 "All the dudes want to hear your version. We will
22 move forward, so tell me -- so tell what happened so that
23 everybody can hear you."

24 Lobo: "I was at Casa Mariachi. I went to eat from
25 work."

1 Casper: "One more thing. Before you begin, watch out
2 that your mind doesn't leave you again. Think about what you
3 are going to say carefully so that we don't catch you in a
4 lie."

5 Muerto: "Tell the truth, dude. Don't tell lies
6 because the dudes here already know and one has to tell the
7 truth."

8 Casper: "Go on."

9 Lobo: "So I went to eat there, dude. First I went
09:25AM 10 in. The two guys that I told you about were there. The one
11 from (unintelligible) that I told you about. I went outside, I
12 ordered the food, and I went to the truck and I put the gun
13 here in my back."

14 Casper: "I'm going to explain to the dudes. This
15 dude -- I don't remember exactly with whom he was that day, but
16 got into a fight with some boys that supposedly Chico and you
17 ended up fighting by a restaurant. Supposedly they had flashed
18 the chavalas or told you guys to fuck yourselves. I don't know
19 what exact words were spoken."

09:25AM 20 Let me stop you right there. Mr. Hernandez Miguel, I
21 think you testified yesterday about an incident that Lobo had
22 had before he was given the clique gun?

23 A. I don't understand the question.

24 Q. Well, let me just ask the question this way. Why was Lobo
25 given the clique gun before he was arrested with it?

1 MR. IOVIENO: Objection, your Honor.

2 THE COURT: I'll allow the witness to testify as to
3 what he saw or heard. Let me hear the answer.

4 A. Because the chavalas had fired shots at him while he was
5 coming out of a restaurant in Everett, and while he was in the
6 car, he had been fired at is what Lobo said. And so the clique
7 gun was given to Lobo to have because if the chavalas had fired
8 at him one time, that meant that they knew him.

9 THE COURT: So, again, his statements about the guns
09:27AM 10 being fired at him are admitted not for the truth of the
11 content but to prove that that statement was made by Lobo for
12 whatever weight the jury chooses to give it.

13 MR. IOVIENO: Your Honor, just so the record is clear,
14 my objection is also in that vein, too, but also based on a
15 prior motion.

16 THE COURT: Okay. Sustained. I'm sorry, overruled,
17 overruled.

18 MR. POHL: Thank you.

19 Q. I'm going to continue reading the transcript now. All
09:27AM 20 right.

21 Lobo: "Yes. We started beating them by Su Casa
22 Restaurant so I went to get the gun and put it in my pocket. I
23 was wearing a long sweatshirt and so you couldn't notice it.
24 No one saw it. I'm sure no one saw me with that. I was going
25 to give \$100 to Rina that I was lending her for her mother. So

1 I went in there, ate, or I was going to eat when the guys got
2 scared and left. When they ran away, Pelon arrived. I had
3 already eaten, Pelon arrived and he ate, then the homie left.
4 A friend of Rina's had arrived while Pelon was still there.
5 Isn't that right?"

6 CW-1: "Yes."

7 Lobo: "So I left. Pelon came with me to the bathroom
8 and I showed the bag to Pelon, too, and I left. When Pelon
9 left, I left 10 minutes later to put the bag back in the
09:28AM 10 vehicle and there were some detectives there already next to
11 the truck going like this, three guys were there."

12 Casper: "Did they open the car?"

13 Lobo: "Around it."

14 Casper: "But did they open it?"

15 Lobo: "That was later when they took me away. They
16 opened the car, so I went back. There was a man shoveling snow
17 digging out a car when I saw that one was coming towards me and
18 one from the other side. I did this with the magazine. I did
19 this with it, and it fell like this to the side in the snow. I
09:29AM 20 bent over to look for the gun like this, and the old man told
21 me where the gun had fallen, otherwise they wouldn't have
22 gotten that gun."

23 Casper: "Now I want to say something. We have always
24 said at all the meetings that we all know that nothing can be
25 done at restaurants with a gun. I know that that -- I know

1 that that you wouldn't have fired it inside anyway, but why did
2 you go get it? Why did you have the gun inside the
3 restaurant?"

4 Lobo: "That was my fuck-up. I thought to myself if
5 that fucking (unintelligible) I was considering going upstairs
6 so that when they would look, I would be far away.

7 And if they the (unintelligible) I was going to shoot
8 them. I wasn't going to wait for the sons of bitches to beat
9 me up, so that's what happened, and they took it from me, and
09:30AM 10 that's what happened."

11 All right. Let's stop right there. The transcript
12 goes on, but did you, Mr. Hernandez Miguel, ever talk about
13 this incident with Lobo and Pelon at the restaurant after this
14 clique meeting?

15 A. I don't remember.

16 Q. Well, let me ask you this. Did you ever speak about it
17 with Lobo himself?

18 A. Yes.

19 Q. Okay. All right. That's the conversation I'd like to ask
09:31AM 20 you about now. And when did you have a conversation with Lobo
21 about this incident with the gun at the restaurant?

22 A. In Wyatt, when we were arrested.

23 Q. Okay. Now, what did Lobo say to you about this incident
24 when you spoke to him about it?

25 MR. MURPHY: Objection, your Honor.

1 THE COURT: Overruled.

2 MR. MURPHY: May we have a continuing line of
3 objection?

4 THE COURT: Yes.

5 MR. MURPHY: Thank you, your Honor.

6 Q. What did Lobo say to you after you had been arrested in
7 this case?

8 A. That he was certain that it was Pelon who had snitched on
9 him in Casa Mariachi because only Pelon had seen the gun while
09:32AM 10 they were in Casa Mariachi and that he had seen Pelon go
11 outside with the telephone. And then when he tried to go out,
12 the detectives were already outside. And he told me that since
13 he was sure that Pelon was a snitch, he had requested the green
14 light to kill Pelon.

15 Q. Stop right there. What's a green light?

16 A. Well, that's like when there's a snitch or someone
17 disrespects the clique, a green light is like an order to kill
18 him.

19 Q. Okay. Who issues a green light?

09:33AM 20 MR. MURPHY: Objection, your Honor.

21 THE COURT: I'll allow him to testify as to his
22 understanding. Overruled.

23 A. The runners.

24 Q. And the runner of your clique was?

25 A. Casper and Playa.

1 Q. Okay. So, what -- so Lobo told you -- after Lobo said
2 that, did he discuss why he wanted a green light?

3 A. Yes.

4 Q. Okay. Why did Lobo request -- did Lobo tell you who he
5 requested a green light from?

6 MR. MURPHY: Objection, your Honor, as to a time
7 frame.

8 THE COURT: Why don't you establish a time frame.

9 MR. POHL: Sure.

09:34AM 10 Q. Did Lobo -- so Lobo told you that he believed Pelon was a
11 snitch?

12 A. Yes.

13 Q. And did -- and Lobo told you that after you were arrested
14 in this case, correct?

15 A. Yes.

16 Q. Did Lobo tell you -- and Lobo told you he asked for a
17 green light?

18 A. Yes.

19 Q. Did Lobo tell you when he asked for the green light
09:34AM 20 against Pelon?

21 A. Yes.

22 Q. When?

23 A. Afterwards when he got out of jail.

24 Q. After Lobo got out of jail?

25 A. Yes, when he was arrested with a gun.

1 Q. And did Lobo tell you who he asked for the green light?

2 A. He told me that he had spoken to Casper.

3 Q. Okay. And did he tell you what Casper said?

4 A. Yes.

5 Q. And what did Casper say?

6 A. That he had to be sure -- he had to be sure that Pelon was
7 a snitch, that he couldn't give the green light until he was
8 sure that he was a snitch.

9 Q. Okay. Did Lobo tell you who -- did Lobo talk to you about
09:36AM 10 how he planned to kill Pelon?

11 A. Yes, he told me he had made a plan with Checha and that
12 everything was ready, and I asked him why I hadn't been told.
13 And he said to me, no, well, how could we tell you if you were
14 Pelon's best friend? If we had told you, you would have gotten
15 involved to help Pelon. That's why we didn't tell you.

16 Q. Go back to Exhibit Number 23 for just a minute. And if I
17 could --

18 MR. POHL: Jurors, if I could ask you to turn to page
19 6 of that transcript.

09:37AM 20 Q. I'm just going to start at the top, Mr. Hernandez Miguel.

21 Lobo: "I called the homeboy."

22 Casper: "This homie was there with you?"

23 CW-1: "With me."

24 Casper: "He was there and you didn't report it?"

25 Lobo: "You are right there. I accept it, homie. I

1 was told to tell the truth, and I'm not bullshitting you."

2 Casper: "Well, if you're going to lie, things are
3 going to get even uglier. You have to tell the truth, homie."

4 Lobo: "I'm telling the truth, homie."

5 Casper: "I'm going to tell you to whom we have sent
6 money, Homie. That money (unintelligible) because some dudes
7 are broke and have to sacrifice a lot for those \$100. Like I
8 said, this is (unintelligible) homeboy, you know,

9 (unintelligible). He fired that gun. He was with a homeboy,
09:38AM 10 dude. Mariaco gave, Playa gave, Caballo gave, for them to come
11 up because they were down below that was more complicated and
12 more serious because they were deported. So what I think homie
13 is that you have to pay back that money, and that money will go
14 to Loquillo."

15 Playa: "How much is it, homie?"

16 Casper: "\$2,500. That is my opinion. The other
17 homeboys are here, and if the others say no, I'm with that, but
18 we need to be logical because you got into this problem, you
19 didn't report the problem, you weren't with homeboys, you were
09:39AM 20 with girls. I know that you had a problem there. You were
21 stuck, and that (unintelligible) gave you that gun to defend
22 yourself if you were having a problem."

23 Lobo: "Now, I'm going to say something. There are
24 dudes that are packing their guns. It could happen to any
25 homeboy. I say this humbly. I am sorry if I fucked up, but it

1 could happen to any homie. There is that homie, Caballo,
2 always packs his gun. God willing nothing like this will
3 happen to him."

4 Caballo: "Look, dude, here is the thing. There is a
5 method to packing a gun, dude. If you go around showing it off
6 with it, you're going to mess up, dude. At no times showing it
7 off."

8 I think that's enough. I just want to ask you a
9 couple questions about that passage. So you heard the
09:40AM 10 conversation about Mariaco, Playa, Caballo giving money for
11 people that have been deported?

12 A. Yes.

13 Q. And Loquillo as well?

14 A. Yes.

15 Q. Can you just explain to the jury what -- you're at this
16 meeting, correct?

17 A. Yes.

18 Q. What's Casper talking about here?

19 MR. MURPHY: Objection, your Honor.

09:40AM 20 THE COURT: I'll allow him to testify as to his
21 understanding. Obviously, the words are the words, but he can
22 explain his understanding. Overruled. Just to be clear on
23 that, he can only testify as to how he interpreted it. He
24 can't say what was in Casper's mind. Go ahead.

25 MR. MURPHY: Thank you, your Honor.

1 THE COURT: I'm sorry, Mr. Lopez.

2 MR. LOPEZ: Can you have the interpreter interpret
3 what you say so that the witness understands what your ruling
4 is?

5 THE COURT: I thought that was happening.

6 Ms. Huacuja.

7 THE INTERPRETER: I did not interpret that. No.

8 THE COURT: All right. Can you instruct the witness
9 just to be careful. He can testify as to his understanding of
09:41AM 10 what was happening or what people said, but he can't testify
11 about what other people were thinking or what they intended.
12 He can't look inside their minds.

13 (Interpreter interpreting)

14 Go ahead, Mr. Pohl.

15 MR. POHL: Thank you, your Honor.

16 Q. So, Mr. Hernandez Miguel, what is your understanding of
17 what is being said here by Casper?

18 A. That the money, the \$100 that was going to be paid for
19 Lobo, would be better used to collect that money to help
09:42AM 20 Loquillo.

21 Q. Okay. Let me ask you one question before we go onto
22 Loquillo. Lobo had been arrested for that gun?

23 A. Yes.

24 Q. And he had gotten -- and then he had been in custody and
25 had gotten released?

1 A. With a bail.

2 Q. Okay. And who paid for the bail, if you know?

3 A. I don't remember.

4 Q. Okay. So what is the money then that people are
5 collecting for Lobo about?

6 A. That was money to help Lobo because he had paid a bail,
7 and the clique always has the obligation of helping a dude when
8 he has a problem.

9 Q. All right. And so you were about to get to Loquillo.

09:43AM 10 Who's Loquillo?

11 A. He's another member of the Eastsides, a homeboy.

12 Q. And at the time of this conversation, where was Loquillo?

13 A. He was in El Salvador, deported.

14 Q. Okay. And why was the clique talking about gathering
15 money for Loquillo?

16 A. That -- we were saying in the clique that instead of
17 getting, collecting money to help Lobo with the bail that the
18 money would be better used to bring Loquillo back up here.

19 Q. Was there any discussion at this meeting or other ESLS

09:44AM 20 clique meetings about Lobo replacing the gun?

21 A. Yes.

22 Q. And were you present for those discussions?

23 A. Yes.

24 Q. Okay. And what did Lobo -- well, who discussed with
25 Lobo -- did Lobo have to get another gun?

1 MR. MURPHY: Objection, your Honor.

2 THE COURT: I guess I'll sustain it in that form.

3 Q. Okay. All right. Lobo lost a gun, correct?

4 A. Yes.

5 Q. The police took the gun that he had with him at the
6 restaurant?

7 A. Yes.

8 Q. Okay. What did Lobo do after he had lost the gun to the
9 police?

09:45AM 10 A. The clique told him that he had to pay back the clique for
11 the gun that he had lost because he had lost it for being
12 stupid.

13 Q. And when you say pay the clique back, how was Lobo
14 supposed to pay the clique back?

15 A. By buying a gun from his own money and bringing it to the
16 clique.

17 Q. Okay. And -- okay. The last thing I think before we
18 leave this particular incident, Mr. Hernandez Miguel, there's a
19 section of the transcript that talked about Caballo, and it
09:46AM 20 says that Caballo always carried a gun?

21 A. Yes.

22 Q. Had you seen -- have you seen Caballo with a gun?

23 A. Yes.

24 MR. POHL: May I approach the witness?

25 THE COURT: Yes.

1 Q. I'm putting in front of you, Mr. Hernandez Miguel, what's
2 has been previously admitted as Exhibits 82.1. Have you seen
3 this before?

4 A. Yes.

5 Q. Where have you seen it before?

6 A. Well, that gun was originally Checha's gun, Checha sold it
7 to Caballo.

8 Q. Okay. When did Checha sell it to Caballo?

9 A. I don't remember.

09:48AM 10 Q. Okay. How did you know that Checha sold it to Caballo?

11 MR. NORKUNAS: Objection.

12 THE COURT: I'll allow it. He's explaining his
13 previous answer which was not objected to. Go ahead.

14 Q. How do you know that Checha gave this gun to Caballo?

15 A. He sold it to him. First I had seen that gun on Checha
16 when he was packing it.

17 MR. NORKUNAS: There's no question in front of the
18 witness.

19 THE COURT: Yes, there is, go ahead.

09:48AM 20 A. And then I saw it on Caballo and he told me that Checha
21 had sold it to him.

22 MR. NORKUNAS: Objection. I ask that it be stricken.

23 THE COURT: Is that one of the *Petroziello* statements?

24 MS. LAWRENCE: I believe so, your Honor.

25 THE COURT: Pardon.

1 MS. LAWRENCE: I believe so, your Honor.

2 THE COURT: All right. I'll let it stand.

3 Q. Mr. Hernandez Miguel, in that passage you talked about
4 collecting money in the clique --

5 THE INTERPRETER: I'm sorry, I missed the first part
6 of your question.

7 Q. Sure. In the transcript that we just read, there was
8 discussion about collecting money to bring back members of
9 Eastside that were in El Salvador.

09:50AM 10 A. Yes.

11 Q. And would I be correct that that was -- bringing people
12 back from El Salvador was something that was talked about at a
13 lot of clique meetings?

14 A. Yes.

15 MR. POHL: Could I have this for the witness, Madam
16 Clerk?

17 THE CLERK: Yes.

18 Q. Mr. Hernandez Miguel, I'm going to ask you to watch a few
19 seconds of this and see if you remember it.

09:51AM 20 (Video played for the witness.)

21 Q. Let me stop it right there. Do you recognize this tape?

22 A. Yes.

23 Q. And who do you see in the picture -- in the section of the
24 video that we just saw, that you just saw?

25 A. I see Casper and Playa there.

1 Q. And do you know where this is?

2 A. Yes.

3 Q. Where is it?

4 A. At the garage in Everett.

5 Q. Okay. And I could continue playing this, but do you
6 remember what happens on this day, this video? You've seen
7 this video before your testimony here today, correct?

8 A. Yes.

9 Q. What is this a video of -- or excerpts of a video of?

09:52AM 10 A. It's from when we have the meetings.

11 Q. Okay.

12 MR. POHL: Your Honor, I'd offer this and ask for
13 permission to publish it to the jury, 25.1 through 4.

14 THE COURT: 25.1 through 25.4, did you see?

15 THE CLERK: Yes.

16 MR. POHL: Yes, your Honor.

17 MR. MURPHY: May we have a date?

18 MR. POHL: Yes, the corresponding transcript is 24,
19 which is March 29, 2015.

09:52AM 20 THE COURT: 25.1 through 25.4 is admitted.

21 (Exhibit No. 25.1 through 25.4 received into
22 evidence.)

23 Q. So, Mr. Hernandez Miguel, I think what I'm going to do is
24 play the videos and then I will stop it from time to time and
25 ask you questions.

1 (Video played.)

2 Q. Who is that, Mr. Hernandez Miguel?

3 A. Casper.

4 Q. And there's a person sort of slightly out of view with a B
5 hat. Do you know who that is?

6 A. Yes.

7 Q. Who is that?

8 A. Playa.

9 (Video played.)

09:54AM 10 Q. When is this? This is at the garage?

11 A. Yes.

12 Q. And has the meeting started yet in this portion of the
13 video?

14 A. Not yet.

15 Q. Okay. How did the ESLS clique meetings that you attended
16 start?

17 A. Greeting the dudes and then we'd start saying that the
18 meeting's about to start and then the word would start talking.

19 (Video played.)

09:55AM 20 Q. All right. Somebody just walked into the screen there.
21 Who is that?

22 A. Playa.

23 Q. Okay. And what's Playa doing sort of before the meeting
24 starts?

25 A. Right now, Playa is collecting the dues from each member

1 of the clique, the money.

2 (Video played.)

3 Q. Can you see the video?

4 A. Yes.

5 Q. So who is that in the video?

6 A. That's Casper and myself.

7 (Video played.)

8 Q. What's Playa doing now? I'm sorry. What's Playa doing
9 now?

09:57AM 10 A. He's collecting the money of the dues that each homeboy
11 has to pay because he's the one in charge of the money, so he
12 knows who has paid and who hasn't paid, and so if somebody owes
13 money, he'll say he has a -- he's got it all written down and
14 he'll say, "Hey, you owe this."

15 (Video played.)

16 Q. What's Playa doing right now?

17 A. He's counting the money.

18 (Video played.)

19 Q. All right. Now, what's happening?

09:59AM 20 A. Playa is giving a report saying how much money is in the
21 box and how much money went up and now Casper is about to begin
22 the meeting.

23 Q. Okay. So you talked about the fact that Casper is there,
24 correct?

25 A. Yes.

1 Q. Playa is there?

2 A. Yes.

3 Q. Who else is at this meeting?

4 A. Lobo, Checha, Negro, Tigre, Chico, Brujo, everyone is
5 there.

6 (Video played.)

7 Q. All right. Playa stepped to the side, Casper came in
8 front. What's happening now?

9 A. Well, Playa finished giving the report on the account of
10:01AM 10 the money situation and now Casper is starting the meeting and
11 giving -- explaining the reason why he called the meeting.

12 MR. POHL: Okay. Jurors, can I have you go to tab 24.

13 Q. We're not going to read this whole transcript, but at the
14 bottom of page 1 begins:

15 Playa: "700, 250, 100 more. Does someone want to pay
16 what he owes?"

17 Casper: "It's not that he wants to, homie. He has to
18 pay \$30 now."

19 Playa: "Lobo's money 1,000 and right now 1500, 300
10:02AM 20 from everyone's dues, 1200 for Lobo and 300 are left there,
21 gathered 1500 from all the homies, 400 from Chico, \$80 more.
22 The reason are 3, one so that people who owe money will pay.
23 Another reason is that Psychito, homies, is that that dude is
24 ready."

25 MR. POHL: All right. Can I have jurors turn to page

1 5. Thank you.

2 Q. So, Mr. Hernandez Miguel, who's Psycho or Psychito?

3 A. Psychito is also a member of the Eastside.

4 Q. At the time of this meeting, do you know where Psychito
5 was?

6 A. Yes.

7 Q. And where was that?

8 A. In El Salvador.

9 Q. And what -- what is being discussed at this meeting
10:03AM 10 concerning Psychito?

11 A. To bring him over here.

12 Q. All right. Page -- I think I told you page 6. I
13 apologize, page 5. So in the middle of the page.

14 Casper: "So the system is that when you hear rumors
15 that we are going to have something, call others to find out.
16 For now we are going to bring the dude. We are going to be
17 sure we gather more money, if necessary, because we can't leave
18 the dude halfway up here. His family is going to help him."

19 Checha: "When does he leave?"

10:04AM 20 Casper: "Monday or Tuesday. We're going to get in
21 touch with the coyote that is waiting for him in Mexico."

22 Playa: "Does he have money to leave now?"

23 Casper: "Yes, \$300."

24 Muerto: "\$300 to use down there."

25 Lobo: "Does the guy already have a coyote?"

1 Casper: "The family got the coyote and he's charging
2 a low fee. He's charging only \$5500."

3 Playa: "The guy will need \$300 by tomorrow."

4 Casper: "Negro, you will be responsible for sending
5 the money. We have to be on top of it after he gets to Mexico.
6 We'll have another meeting when the guy gets to Mexico."

7 All right. Let me stop right there. I'm going to
8 read the rest of this page. Let me just stop right there.
9 "Negro, you'll be responsible for sending the money."

10:04AM 10 So can you explain that? Playa on the video collected
11 money?

12 A. Yes.

13 Q. So who is responsible in the Eastside clique for sending
14 money from the clique to members in El Salvador?

15 MR. MURPHY: Objection.

16 MR. LOPEZ: Objection. Asked and answered yesterday.

17 THE COURT: Overruled.

18 MR. MURPHY: Your Honor, may we approach?

19 THE COURT: Yes.

10:05AM 20 (THE FOLLOWING OCCURRED AT SIDEBAR:)

21 THE COURT: Yes.

22 MR. MURPHY: Your Honor, given the way the testimony
23 has gone this morning, I'd request the same kind of cautionary
24 instruction about immigration law violations that the Court has
25 given about firearms. In other words, they aren't racketeering

1 acts, they aren't charged in the indictment.

2 THE COURT: Okay. I'll do that.

3 (SIDEBAR CONFERENCE WAS CONCLUDED)

4 THE COURT: All right. Ladies and gentlemen, you'll
5 recall that I gave you an instruction to the effect that
6 there's evidence of firearm violations, but that those -- no
7 one was charged with firearms violations, and they weren't
8 racketeering acts. The same goes for immigration violations.
9 Again, no one here is charged with immigration violation, and
10:06AM 10 those are not charged as racketeering acts.

11 Go ahead, Mr. Pohl.

12 MR. POHL: Thank you very much, your Honor.

13 Q. Mr. Hernandez Miguel, Playa collects the money from people
14 in the clique?

15 A. Yes.

16 Q. Who in the clique is responsible for sending money from
17 the clique here to members of Eastside in El Salvador?

18 MR. LOPEZ: Objection.

19 THE COURT: Overruled.

10:07AM 20 A. There are several. There's Negro, Vincentino, and Checha
21 did it several times as well.

22 Q. All right. So is there a way that -- well, when somebody
23 sends money to El Salvador, what do they have to do -- do you
24 know where they send the money from?

25 A. Yes.

1 Q. Where is that?

2 A. Western Union.

3 Q. Okay. And how -- do you know whether Negro, Vincentino,
4 Checha ever actually sent the money for the clique from -- at
5 Western Union to people in El Salvador?

6 A. Yes.

7 Q. Okay. How do you know?

8 A. Because whenever a dude is asked to take the money and go
9 and send it to the dudes in El Salvador, he has to then return
10:08AM 10 with a receipt and show everyone the receipt of actually
11 sending the money.

12 Q. All right. I'm going to finish this page of the
13 transcript and then we're going to get back to the video.

14 6, on page 6.

15 CW-1: "Do you have the money, Lobo, to buy a gun?"

16 Flaco: "We're working on money for something else."

17 Casper: "The gun is necessary, but we have to focus."

18 CW-1: "If you have the money, I can hook you up."

19 Checha: "If he has money, it would be better to use
10:09AM 20 it to bring Psychito than to buy a gun right now."

21 Casper: "Let's wait and see how much money we will
22 have in case of emergency for Psychito. We have to have money
23 in case Psychito has an emergency."

24 Playa: "There's 355 money from dudes without
25 including the rest."

1 Casper: "Best to have it there. Anything else that
2 anyone wants to discuss? Everything is okay then? All right.
3 So let's stay in touch for the next meeting. Let's wait and
4 see how much money we will have in case of emergency for
5 Psychito."

6 MR. MURPHY: Objection, your Honor. I think there's
7 simply a repetition.

8 THE INTERPRETER: I'm sorry, I didn't hear --

9 THE COURT: A repetition? I'm sorry, meaning he's
10:10AM 10 read the transcript wrong.

11 MR. MURPHY: Yes.

12 THE COURT: All right. Why don't you reread that last
13 part and try to make it accurate. Again, ladies and gentlemen,
14 the reading is a form of presenting it to you, but the
15 transcript is the actual evidence.

16 Q. "Best to have it there -- well, excuse me."

17 Casper: "Best to have it there. Anything else that
18 anyone wants to discuss? Everything is okay then? All right.
19 So let's stay in touch for the next meeting. Let's wait and
10:10AM 20 see how much money we will have in case of emergency for
21 Psychito. We have to have money in case Psychito has an
22 emergency."

23 Playa: "There's 355 money from dudes without
24 including the rest."

25 Casper: "Best to have it there. Anything else that

1 anyone wants to discuss? Everything is okay then? All right.
2 So let's stay in touch for the next meeting."

3 Playa: "What about Chentino, he also has to give us
4 an explanation?"

5 What does Chentino have to give an explanation for, do
6 you remember?

7 A. No, I don't remember.

8 Q. All right. I'm going to let the video play in a second,
9 but how do you end your meetings?

10:11AM 10 A. Flashing MS.

11 (Video played.)

12 Q. Did you -- Mr. Hernandez Miguel, did you see a hand sign
13 in the video?

14 A. Yes.

15 Q. Okay. And what was it?

16 A. Flashing MS, like this. (Indicating)

17 Q. Okay. Who did you see flash MS?

18 A. Casper, myself. We all do it when the meeting is over.

19 Q. So the last line on page 7 of this transcript is:

10:12AM 20 Casper: "We'll have to leave it to Sunday. See what
21 he has to say. Watch out then, the Mara."

22 All right. So I think after the meeting breaks up,
23 there's one more clip I'd like to show you, which is 25.4.

24 (Video played.)

25 THE INTERPRETER: Excuse me, there's no 25. I don't

1 have the 25.4.

2 THE COURT: It's the video, it's not the transcript.

3 THE INTERPRETER: Oh. Okay, sorry.

4 Q. Who is that, Mr. Hernandez Miguel?

5 A. Playa.

6 Q. What's Playa doing here?

7 A. Counting the money.

8 (Video played.)

9 MR. POHL: For the witness only.

10:15AM 10 Q. So, in that last clip, did you see, as the meeting broke
11 up, a number of the members of the Eastside clique?

12 A. Yes.

13 Q. I'm going to show you, for the witness, what's been marked
14 as Exhibit Number 26. Do you see that, Mr. Hernandez Miguel?

15 A. Yes.

16 Q. Was that -- is this a still picture from that last video
17 clip that we just watched?

18 A. Yes.

19 Q. Who is that in the picture?

10:16AM 20 A. Checha.

21 MR. POHL: I'd offer 26 and ask to publish, your
22 Honor.

23 THE COURT: All right. It's admitted, 26.

24 (Exhibit No. 26 received into evidence.)

25 Q. Who is that again, Mr. Hernandez Miguel?

1 A. Checha.

2 Q. All right. Mr. Hernandez Miguel, at the time that you
3 were arrested in this case, you had possession of the clique
4 gun?

5 MR. MURPHY: Objection, your Honor. Leading.

6 THE COURT: Sustained.

7 Q. Well, at the time that you were arrested in this case,
8 what -- at the time you were arrested in this case,
9 what -- well, did you have a gun at the time that you were
10 arrested in this case?

10:17AM

11 A. Yes.

12 Q. Okay. What kind of gun was it?

13 A. A 9 millimeter.

14 Q. Okay. How long had you had it?

15 A. Approximately three weeks or a month.

16 Q. And was the gun your own personal gun?

17 A. No.

18 Q. Okay. What do you mean by that?

19 A. That was the clique gun. The clique bought it for all the
20 homeboys, whoever needed it.

10:18AM

21 Q. Okay. Did you have ammunition for the gun?

22 A. Yes.

23 Q. Okay. Do you know --

24 MR. POHL: May I approach the witness, your Honor?

25 THE COURT: Yes.

1 Q. Mr. Hernandez Miguel, I'm going to show you a series of
2 items starting with Exhibit Number 51. Do you recognize that?

3 A. Yes.

4 Q. What is that?

5 A. That's the 9 millimeter I had at my house of the clique.

6 Q. Okay. Did you -- after you were arrested in this case,
7 you and your attorney met with agents, correct?

8 A. Yes.

9 Q. Okay. And do you know whether or not you talked about
10:20AM 10 this gun in that conversation?

11 A. Yes.

12 Q. Okay. And what did you say about this gun in that
13 conversation?

14 A. That I had the clique gun in my basement.

15 Q. Okay. And did you have ammunition for that gun in your
16 basement?

17 A. Yes.

18 Q. Okay. And would that be Exhibit Number 52?

19 A. Yes.

10:20AM 20 Q. What's that?

21 A. Those are the bullets.

22 Q. What kind of bullets?

23 A. 9 millimeters.

24 Q. Okay. And it's an entire box?

25 A. Yes.

1 Q. The box was full?

2 A. Yes.

3 Q. Okay. And Exhibit 53, were these also in your basement?

4 A. Yes.

5 Q. Okay. What are they?

6 A. The same thing, they're bullets for a 9 millimeter.

7 Q. Okay. And finally this bag, this is Exhibit Number 54.

8 Have you seen that before?

9 A. Yes.

10:21AM 10 Q. And what are these?

11 A. They're bullets for a 45.

12 Q. Mr. Hernandez Miguel, while you had the clique gun and the
13 ammunition, did any member of the Eastside clique ask to borrow
14 it?

15 A. Yes.

16 Q. And who was that?

17 A. Checha.

18 Q. Did Checha say why he wanted to borrow it -- "borrow" is
19 probably the wrong word. Did he ask you why he wanted to get
10:22AM 20 it?

21 MR. NORKUNAS: Objection.

22 THE COURT: I'll sustain the objection. What did
23 Checha say?

24 Q. When Checha talked to you about the gun, what did he say?

25 A. He said that he needed the gun because there were some

1 culeros at Casa Mariachi. He asked me if I could bring it
2 over, and I said no, that, if you wanted it, he needed to come
3 to the house to get it.

4 So he came to the house, and when I took out the gun
5 and showed it to him so he would take it, he told me that he
6 didn't need it any longer, that he had just come by to pick up
7 the bullets because he had one, but what he didn't have were
8 bullets, and he only took the bullets.

9 Q. Mr. Hernandez Miguel, I want to talk to you about an
10:24AM 10 incident in May of 2015, where you committed a stabbing. Do
11 you remember that?

12 A. Yes.

13 Q. Okay. Do you remember how that incident began? Where
14 were you?

15 A. Yes.

16 Q. Where were you?

17 A. First, I was at the garage in Everett. Pelon called me
18 and said let's go eat at Casa Mariachi in Chelsea. Well, we
19 were halfway there, Brujo called that they were at a park, a
10:25AM 20 ballpark in Chelsea, that Vago had gone there to buy marijuana
21 and that there were about 12 chavalas at the basketball court
22 and that they had started some problems with Vago and could we
23 drop in, so I said that we had nothing with us in the car.

24 Pelon told me let's call Domingo, so I called Domingo
25 to bring something from the house. So Domingo brought out a

1 knife, so after we picked up the Domingo, we headed to the
2 park. When we got to the park, we saw a whole bunch of culeros
3 over there, so I said we're going to go in, but we're not going
4 to start problems to see what the 18s would say.

5 Q. Let me ask you another question, okay. You got to the
6 park. Okay. Who -- did you see people from MS in the park?

7 A. Yes.

8 Q. Who was at the park?

9 A. Brujo, Vago, Vampiro, myself, Pelon, and Domingo hadn't
10:27AM 10 been jumped into MS.

11 Q. Okay. When you got to the park, Domingo had the knife?

12 A. Yes.

13 Q. Okay. What are we talking about here, Mr. Hernandez
14 Miguel, what kind of knife did he have?

15 A. It was a yatagan, and it's about this big, the kind that's
16 used by the military. (Indicating)

17 MR. POHL: I'll just ask the record to reflect that
18 the witness held his hands about I guess maybe a foot apart.

19 THE COURT: All right.

10:27AM 20 Q. So what happened next, Mr. Hernandez Miguel?

21 A. It was -- we went in, me, Domingo was behind me, Brujo,
22 Vago and Vampiro.

23 Q. Okay. Let me stop you right there. Where was Pelon?

24 A. Pelon had stayed in the car. I don't know what he was
25 fixing in the car, but he was the last one to get out.

1 Q. All right. Then what happened when you were in the park
2 with Brujo, Vago, Vampiro, yourself, what happened?

3 A. We walked into the park, and when we got to a corner over
4 here, the chavalas were over there, and since I was wearing a
5 blue shirt and a baseball cap that says "503," and it was blue,
6 and I was wearing shorts and Nike Cortez, so when they saw me,
7 they immediately got up. So when they stood up, I flashed the
8 MS, and I said, "It's La Mara, you sons of bitches, what's up?"

9 And one chavala was telling the others to come get --
10:29AM 10 jump us, and I saw one pull out a knife. So when I saw that, I
11 said to Domingo, hey, Domingo get that thing out, give it to
12 me. When Domingo tried to pull out the knife, he wasn't able
13 to get it out. When they saw that Domingo pulled out the
14 knife, a bunch of them started running away, and Domingo handed
15 me the knife and we started following them.

16 Vampiro followed some from one side, and I went on the
17 other side. Then I saw two dudes beating one that was on the
18 ground like they had knocked him to the ground. I didn't see
19 when they knocked him to the ground, but when I saw that they
10:30AM 20 were beating him on the ground, I came over with a knife and I
21 started stabbing downwards at him with the knife, so then I saw
22 that the guy was like kicking his feet up in the air and trying
23 to crawl under a car.

24 When I was stabbing him, he deviated the knife that
25 was in my hand when he kicked and I wound up cutting myself

1 here with the knife.

2 Q. After you stabbed him, where did you go?

3 A. Myself, Pelon, and Domingo got into Pelon's car, and
4 Vampiro and Brujo and Vago left in Vampiro's car. Each car
5 went its own way. We headed towards Revere. Since my hand --
6 since I had a wounded hand, I was bleeding a lot, and I wrapped
7 the shirt around it. And while we were going down Broadway, I
8 said to Pelon, let's go over to Playa's because he lived around
9 there, and I was wounded. So we called Playa and headed to his
10:32AM 10 house, and we got there. We -- Playa opened the door, and we
11 went down to like a basement. He has there, and I told him
12 then what had happened, and since I had blood on my shorts and
13 on my shirt, he helped me clean the wound, he gave me
14 something. He had like a bottle of tequila and with that
15 bottle of tequila, he spilled some on the wound to clean it.

16 Q. Stop. Let me ask you another question. So the people
17 that were at Playa's house, were you?

18 A. Yes.

19 Q. Pelon?

10:33AM 20 A. Yes.

21 Q. And Domingo?

22 A. Yes.

23 Q. And I think you testified earlier that Domingo hadn't been
24 jumped into MS-13 yet, correct?

25 A. No.

1 Q. And was Domingo hanging around or associated with a
2 clique?

3 A. Yes.

4 Q. Do you know which one?

5 A. He was with the Enfermos.

6 Q. Okay. And that's a different clique than yours?

7 A. Yes.

8 Q. Did Playa say anything to you about having Domingo at his
9 house with you and Pelon?

10:34AM 10 A. Yes.

11 Q. What was that?

12 A. He asked us why we had brought the kid there, that we
13 didn't know him and he might snitch on us and that he shouldn't
14 bring people over that he didn't know, and I said, well, how
15 could we leave him somewhere else since we were together.

16 Q. After -- well, I think you talked about cleaning your
17 wound, correct? Did you do anything with your clothes?

18 A. Yes.

19 Q. What was that?

10:35AM 20 A. Playa gave me a pair of shorts and a shirt. And the
21 bloody shorts and shirt he told me to leave it with him and he
22 would take it to the garbage since he worked with the garbage.

23 Q. Where did you go next?

24 A. From there, I spoke to Brujo to find out where he was, and
25 Brujo told me they had run to the beach in Revere, and I said

1 that we could see each other around Lynn because Chelsea was
2 hot because of the stabbing.

3 MR. LOPEZ: Objection, your Honor. There's no
4 question, he's just talking.

5 THE COURT: I'll let it stand. Why don't -- how much
6 more do you have on this topic?

7 MR. POHL: Just a few questions and we could finish
8 that and then after the break move onto something else.

9 THE COURT: Why don't we do that.

10:36AM 10 MR. POHL: Thank you, your Honor.

11 Q. Where did you go? You said you were going to meet up with
12 somebody. Where did you end up going?

13 A. We wound up in Lynn near a port, by the water there in
14 Lynn. There we met again with Brujo, Vampiro, and Vago.

15 Q. And what did you do with the knife?

16 A. We threw it in the ocean.

17 MR. POHL: I think this would be a good time to stop.

18 THE COURT: Okay. We'll take a break now.

19 THE CLERK: All rise for the jury.

10:49AM 20 (JURORS ENTERED THE COURTROOM.)

21 THE COURT: Can I see counsel at sidebar?

22 (THE FOLLOWING OCCURRED AT SIDEBAR:)

23 THE COURT: I received a report which I did not
24 personally see that one of the defendants and, I'm sorry,
25 street name Lobo made a threatening gesture to the witness in

1 the form of putting his hands to the face and making it look
2 like a gun.

3 I didn't personally see it. I'm going to be looking
4 for it and I'm making no finding now but alerting everyone to
5 it. Obviously, it's a very serious matter, and if it comes to
6 that and it winds up I need to hold a hearing or whatever,
7 obviously one of the possibilities is not permitting the
8 defendant to attend, to attend remotely, but we'll take it a
9 step at a time, and, again, I didn't personally see anything,
10:56AM 10 and I'm making no findings.

11 MR. LOPEZ: Was it a juror who raised this issue?

12 THE COURT: No. Thank you.

13 (SIDEBAR CONFERENCE WAS CONCLUDED)

14 THE COURT: All right. Mr. Pohl.

15 MR. POHL: Thank you very much, your Honor.

16 Q. Mr. Hernandez Miguel, after you threw the knife into the
17 ocean, the knife you had used for the stabbing, did you talk
18 about that stabbing after that?

19 A. Yes.

10:57AM 20 MR. POHL: Jurors, can I ask you to pull out your
21 transcript binders for Exhibit 73. 73.

22 Q. All right. This is a recording from June 4, 2015,
23 correct?

24 THE INTERPRETER: I'm sorry.

25 Q. From June 4, 2015. I'm sorry, 73. And do you remember

1 where you were when you had this conversation, Mr. Hernandez
2 Miguel?

3 A. In Pelon's car.

4 Q. Muerto: "No, it's awesome, man. We're going to attack
5 with this son of a bitch, too. In Chelsea we have fucked up
6 several culeros. I attacked some with a knife exactly like
7 this one, identical. I hit the son of a bitch on Highland
8 Street. There were a whole bunch of culeros."

9 CW-1: "About 10."

10:58AM 10 Muerto: "About 10. There were six of us, four.

11 CW-1: "Four."

12 Muerto: "There were another three dudes, and we were
13 three more. Six of us. They all took off running. I went
14 straight after them. The beast got you, sons of a bitches.
15 This is the one that rules. They all stopped. The guys were
16 frozen. I said to the other dude, "Get me the machete." As
17 that guy gave it to me, the sons of a bitches ran, man. No,
18 man, afterwards, (unintelligible) sitting down (unintelligible)
19 we got them, dude."

10:59AM 20 MR. POHL: Can I have 74 for the witness, 74.1-3,
21 thank you, Madam Clerk.

22 Q. Do you recognize this, Mr. Hernandez Miguel?

23 A. Yes.

24 Q. Okay. 2 and 3. The transcript we just read talked about
25 you having -- you using a knife just like this one, right?

1 A. Yes.

2 Q. And you had a knife on you when you were describing this,
3 right?

4 THE INTERPRETER: I'm sorry.

5 Q. And you had a knife on you at the time you were describing
6 this?

7 A. Yes.

8 Q. Are these pictures of that knife?

9 A. Yes.

11:00AM 10 MR. POHL: Your Honor, I'd offer these.

11 THE COURT: All right. They're admitted 74.1 through
12 3.

13 (Exhibit No. 74.1 through 74.3 received into
14 evidence.)

15 Q. What's this, Mr. Hernandez Miguel?

16 A. That's the yatagan.

17 Q. What's a yatagan?

18 A. It's a knife that soldiers use and it's about this big.

19 (Indicating)

11:00AM 20 Q. Again, you're holding your hands maybe a little under the
21 length of your shoulders apart; is that correct?

22 A. Yes, a little bit smaller than a machete.

23 Q. .2. Do you see -- does the knife have an edge?

24 A. Yes.

25 Q. Can you see that in that photograph?

1 A. Yes.

2 Q. .3. What is that?

3 A. That's the knife. It has the handle and it's inside the
4 container.

5 Q. Okay. So just so that we're clear, this is not the knife
6 you used for the stabbing, correct?

7 A. No.

8 Q. Okay. You threw that knife in the ocean?

9 A. Yes.

11:01AM 10 Q. And I know we talked about the gun and the ammunition that
11 was found at your house. Did you also have another weapon at
12 your house after you were arrested in this case?

13 A. Yes.

14 MR. POHL: Can I approach, your Honor?

15 THE COURT: Yes.

16 Q. Okay. I'm handing you or I'm going to hold up for you
17 Exhibit 50. Do you recognize that?

18 A. Yes.

19 Q. Okay. What is this?

11:02AM 20 A. It's a machete.

21 Q. Okay. So just so I'm clear, the knife that we're looking
22 at here in this picture, is that knife this knife here that I'm
23 holding, the machete?

24 A. No.

25 Q. Different?

1 A. It's different.

2 Q. And what is this weapon, Exhibit 50?

3 A. It's a weapon that most of the dudes in MS use to attack
4 the chavalas.

5 MR. MURPHY: Objection, your Honor. May that be
6 stricken?

7 THE COURT: Yes, I'll strike the answer.

8 Q. So is this your machete?

9 A. Yes.

11:03AM 10 Q. All right. This was at your house?

11 A. Yes.

12 Q. With the guns?

13 A. The guns were in the basement, the machete was in my room.

14 MR. POHL: Okay. I'd offer 50, your Honor.

15 THE COURT: All right. It's admitted, Exhibit 50.

16 (Exhibit No. 50 received into evidence.)

17 Q. Mr. Hernandez Miguel, have you ever heard of the term, "a
18 program"?

19 A. Yes.

11:04AM 20 Q. And you've used, on a number of occasions, the word
21 "clique"?

22 A. Yes.

23 Q. Does the word "program" mean anything to you as a member
24 of MS-13?

25 A. Yes.

1 Q. Okay. So what is a program?

2 A. Every clique has to be in a program. Only runners who are
3 the leaders of MS can be in the program. Those runners are
4 even higher up than the clique runners, and every clique has to
5 attach itself to a program.

6 Q. Have you ever heard of a program called the East Coast
7 Program?

8 A. Yes.

9 Q. Okay. And how did you hear about the East Coast Program?

11:06AM 10 A. The East Coast Program is with the Eastside clique.

11 That's where I heard about the program. Let's say you have a
12 bowl --

13 MR. MURPHY: Objection, your Honor.

14 THE COURT: All right. Why don't you put another
15 question to the witness.

16 Q. Okay. I think you were just trying to -- let me ask you
17 this question. You were trying to explain -- I think you were
18 trying to explain the relationship between a clique and a
19 program?

11:07AM 20 A. Yes.

21 Q. So let me just ask you that question straight out. What
22 is the connection between a clique and the program for MS-13?

23 A. The program sets the rules and decides, and the program
24 might put a green light on members of cliques if they refuse to
25 enter the program because every clique has to be in a program,

1 and there are several programs. And the program states that
2 any clique that does not want to be in a program is rebelling
3 against MS-13.

4 Q. So, let me ask you this. Were members of the Eastside
5 clique -- well, so I understand what you're saying about
6 programs wanting to control things, okay?

7 A. Yes.

8 Q. What benefits do clique members get for being in a
9 program?

11:08AM 10 A. The obvious is that every member of a clique, let's say
11 the Eastside clique, if a homie is deported to El Salvador, the
12 program is supposed to receive that homie in El Salvador.

13 Q. What if someone is killed?

14 MR. MURPHY: Objection, your Honor.

15 THE COURT: Why don't you rephrase. I'm not sure what
16 you mean.

17 MR. POHL: Sure.

18 Q. Are there any other benefits that the programs provide to
19 members of MS-13?

11:09AM 20 A. Yes, if the clique is in the program and a dude -- a homie
21 from the clique is killed, the program covers all the funeral
22 costs.

23 Q. When you were a member of the Eastside clique, did you
24 know whether Eastside joined the East Coast Program?

25 A. Yes.

1 Q. Okay. And did you?

2 A. Yes.

3 Q. Okay. And what was the requirement for Eastside in
4 joining the East Coast Program? What kinds of things did the
5 clique have to do to be in the program?

6 MR. MURPHY: Objection, your Honor.

7 THE COURT: I'll let him testify as to his
8 understanding.

9 MR. MURPHY: Could that instruction be interpreted?

11:11AM 10 Q. Well, let me ask you this. When you joined the program,
11 did the clique have to send money to El Salvador?

12 A. Yes.

13 Q. Okay. How much?

14 A. The program requests \$50 a month for each clique.

15 Q. Okay. And you and the members of Eastside joined the East
16 Coast Program?

17 MR. MURPHY: Objection, your Honor.

18 THE COURT: The clique joined the program. Why don't
19 you rephrase.

11:12AM 20 Q. So, you -- were you present at meetings -- strike that.
21 Did the Eastside Locos Salvatrucha clique join the East Coast
22 Program?

23 A. Yes.

24 Q. Okay. And did you discuss joining that program at clique
25 meetings?

1 A. Yes.

2 Q. Around when was this?

3 A. Around 2013 or 14.

4 Q. Okay. And how do you know from attending those meetings
5 that Eastside was a part of the East Coast Program?

6 A. Because every clique that's in the program has to send \$50
7 every month.

8 Q. Okay. And was the Eastside clique doing that?

9 A. Yes.

11:13AM 10 Q. Okay. While you were in the Eastside clique, did you and
11 the other clique members talk about whether to stay in the East
12 Coast Program?

13 A. Yes.

14 Q. Okay. Why --

15 MR. POHL: And, jurors, can I ask you to turn to tab
16 27.

17 Q. So, before we read this transcript, Mr. Hernandez Miguel,
18 when you talked at clique meetings about the East Coast
19 Program, were there members of your clique that did not want to
11:14AM 20 be in that program?

21 A. Yes.

22 Q. And there were members who were -- who did want to be in
23 the program?

24 A. Yes.

25 Q. Okay. And when you would -- did you ever -- well, where

1 are the leaders of the East Coast Program based?

2 A. Most of them are in jail in El Salvador. Some are out in
3 the street.

4 Q. Okay. And why did you -- why were there members of the
5 clique that did not want to be in the program?

6 MR. LOPEZ: Objection.

7 THE COURT: He can testify -- please translate this --
8 he can testify as to what people said, but, of course, he
9 doesn't know what they were thinking and can't testify about
10 that.

11:15AM

11 (Interpreter interpreting)

12 THE INTERPRETER: Could you repeat the question? I
13 didn't get to ask it.

14 MR. POHL: Sure.

15 Q. Well, let me ask it this way. When you were in the
16 program, what is your understanding of who -- let me give you
17 an example. If someone -- if one of the members of the clique
18 had wanted to ask for a green light, okay, and you were in a
19 program, do you know how -- what you would have to do in order
20 to get permission to do a green light?

11:16AM

21 MR. LOPEZ: Objection, your Honor.

22 THE COURT: Overruled.

23 A. I don't understand the question.

24 Q. Okay. Well, when you were -- that's right. While you
25 were in the Eastside clique, did you ever participate in calls

1 with El Salvador?

2 A. Yes.

3 Q. Okay. And do you remember what kinds of -- why you called
4 El Salvador?

5 A. Yes.

6 Q. Why was that?

7 MR. MURPHY: Objection, your Honor.

8 THE COURT: Well, again, you ask him why, and it
9 suggests -- you're asking for people's thought process as
10 opposed to asking what was discussed, which I'll allow.

11 MR. POHL: That's fine. Thank you, your Honor.

12 Q. So, when you called El Salvador -- when you called
13 El Salvador, do you know a -- do you know a member of MS-13
14 known as Scrappy?

15 A. I don't know him, but I have spoken to him.

16 Q. Okay. And what about an MS-13 named Suga or Sugar?

17 A. I also don't know him, but I have spoken with him.

18 Q. Okay. And do you remember a time where you were on a call
19 with Scrappy and Sugar?

11:18AM 20 A. Yes.

21 Q. Okay. And do you remember what was discussed during that
22 call?

23 A. Yes.

24 Q. What was discussed?

25 A. About the program.

1 Q. Okay. What kinds of things were discussed about the
2 program?

3 A. Sugar said that he wanted to talk with the runners and the
4 entire Eastside clique.

5 Q. Okay. And was there a call that at least in part captured
6 that conversation?

7 A. Yes.

8 MR. POHL: Jurors, 27. Thank you.

9 Q. All right. So I'm not going to read the first couple
10 pages. Fair to say that you -- there was a conversation about
11 how you were going to make the call?

12 A. Yes.

13 Q. Whether you were going to use a phone, or use a WhatsApp
14 or something like that?

15 A. Yes.

16 Q. Okay. And why do you call Scrappy?

17 A. Because Scrappy would speak more with them and also with
18 Casper. He was more connected to Casper.

19 Q. Okay. When you say "them," who are you talking about?

11:20AM 20 A. With the dudes from the program.

21 Q. Okay. So, is Scrappy -- I understand you said a moment
22 ago that you've never met him, but you've talked to Scrappy?

23 A. Yes.

24 Q. Okay. And based on the conversations that you've had with
25 Scrappy, did Scrappy tell you where he lived?

1 A. He never told me where he lived, but supposedly he lived
2 around Texas.

3 Q. All right. And so after you called Scrappy, did you have
4 a call with Sugar?

5 A. Yes.

6 MR. POHL: Okay. All right. So can we turn to page
7 6. Thank you.

8 Q. Okay.

9 CW-1: "Yes. Call all of them."

11:22AM 10 Flaco: "Yo."

11 Casper: "Call them."

12 Unidentified male: "What's up?"

13 Casper: "What's up?"

14 Sugar: "Who is speaking?"

15 Casper: "Uh-huh."

16 Sugar: "Present are the dudes down here
17 (unintelligible) and another one, but I don't know if you guys
18 can talk there."

19 Casper: "Don't worry, it's fine. No, no, that's
11:22AM 20 fine."

21 CW-1: "Call those dudes. Close the door over there."

22 Casper: "Go ahead."

23 Unidentified male: "I'll put him on right now.

24 Wait."

25 Casper: "Hello."

1 Unidentified male 1: "We're here, right?"

2 Casper: "Hey, what's up, dog? It's Casper, homeboy.
3 Hello.

4 Unidentified male 1: "Well, dog, how are you?"

5 Casper: "Fine. You know, Sugar called me the other
6 day. He wanted to (unintelligible) with me, dog."

7 Sugar: "What's up? I'm here, brother."

8 Casper: "What's up, Sugar?"

9 Sugar: "How are we doing?"

11:23AM 10 Casper: "I'm here at the suite, what's up?"

11 Sugar: "Very well, we are only runners here and we
12 are the runners on the streets for the East Coast Program?"

13 Casper: "Yes."

14 Sugar: "(Unintelligible.)"

15 Casper: "Yes."

16 Sugar: "What we're going to do is I'm going to talk
17 with people here, 20 people here. Do you think that you can
18 get us together with your clique? We are going to talk with
19 them at your shop."

11:23AM 20 Casper: "Dog. You're calling the perfect place.

21 Everybody is listening to you right here. We're all gathered
22 here, dog."

23 Sugar: "All the homies from your clique are here?"

24 Casper: "All of us here listening to you, homeboy."

25 Sugar: "This is how things are. Listen up here, I'm

1 the program spokesman, all right. Right. And so we are here
2 going to do this thing. We have been planning for some time
3 already."

4 Casper: "Uh-huh. So what's up? What happened? Once
5 we are up, we'll continue with discussing how the things are."

6 And then the recording ends.

7 Okay. Where -- do you remember where that
8 conversation took place?

9 A. Yes.

11:24AM 10 Q. Where?

11 A. At the garage in Everett.

12 Q. Okay. And were you able to hear on the call -- well, how
13 many people were present from the Eastside clique when that
14 call was made?

15 A. The entire clique.

16 Q. Okay. And how were you able to hear the conversation?

17 A. You put the speaker phone on.

18 Q. And who actually -- whose phone was used to make the call?

19 A. I don't remember.

11:25AM 20 Q. Okay. Mr. Hernandez Miguel, do you remember a meeting of
21 the clique where Master and Tigre were beaten?

22 A. Yes.

23 MR. POHL: Can you pull out 28, jurors. Your Honor,
24 this is -- just to be clear, this was -- this transcript goes
25 with Exhibit Number 206, which I think was admitted in full

1 yesterday.

2 THE COURT: Yes.

3 THE INTERPRETER: Did you say 28?

4 MR. POHL: The transcript was 28, yes.

5 Q. And just to be clear, Mr. Hernandez Miguel, prior to your
6 testimony here today, have you reviewed this recording?

7 A. Yes.

8 Q. And did you use the same process that we discussed
9 yesterday in reviewing it with the agents and the interpreter?

11:27AM 10 A. Yes.

11 Q. Okay. Did you identify the speakers on the recording as
12 best you could?

13 A. Yes.

14 MR. POHL: Your Honor, I'd admit 28, which is the
15 transcript.

16 THE COURT: All right. It's admitted. I think a
17 portion of it had been previously admitted.

18 MR. POHL: Had been admitted yesterday. I now want to
19 move it in full. Thank you.

11:27AM 20 (Exhibit No. 28 received into evidence.)

21 Q. All right.

22 Casper: "Hey, dude, turn off the cell phones, Homies.
23 Okay, so let's begin. Pay attention, dudes. We're going to
24 discuss the problems, homeboys. To begin with, if someone
25 calls, it's not necessary to keep talking on the phone. The

1 less we talk about the same subject, the better. So we will
2 make one single call. The person calls you and tells you at
3 what time to come and go and that's all.

4 We already know at what time it is. Then we have a
5 problem with this. You know what you're getting."

6 Master: "Yes."

7 Casper: "'This dude is getting the beating, dudes.
8 We had ordered him to be on the wagon and he failed, and as you
9 know, dudes, so I don't know what decisions you will make after
11:28AM 10 you give this dude the beating. If he will continue the same
11 or what, but we will decide after the beating, we will talk
12 about that subject because I will go over point by point, you
13 know.

14 Master, you also have a beating, dude. The dude
15 sentenced you with that for disappearing. A fucking lot of
16 time that we hadn't heard from you, doggie. Whenever one is
17 out of a touch, doggie, for more than a month, two months,
18 dude, then you fucked up.

19 Master: "Yeah, but if the work doesn't allow me, and
11:29AM 20 I spend my time in the streets of Somerville."

21 Casper: "Look, Master, the thing is this.
22 Communication with the clique, that's what we're interested in,
23 that we decided."

24 Master: "Well, don't have everyone's telephone number
25 and they have my number, too."

1 Casper: "That is your mistake. You're supposed to
2 have it. You're the one getting the beatings, and you are the
3 one that is supposed to keep calling, dog. You were told about
4 that beating two meetings ago. We were still trying to contact
5 you. You know how I contacted you? Through Pantera. We
6 hadn't heard from you at all, and your old number was
7 disconnected. You hadn't given us your new number."

8 Before I go on, who's Pantera?

9 A. He's the dude from the Everetts.

11:29AM 10 Q. He's in MS-13?

11 A. Yes, he was a leader.

12 Q. In the Everett clique?

13 A. Yes.

14 Q. Not yours?

15 A. No, in the Everetts.

16 Q. Okay. Master continues on, and if we could turn to page
17 3.

18 "So there it is. This is the issue. So, let's carry
19 out the beating and then continue discussing other subjects
11:30AM 20 that we have to take care of now. You go first Tigre into the
21 center, Negro, Beto. Do it, Playa."

22 All right. So do you remember, you were present at
23 this meeting, correct?

24 A. Yes.

25 Q. And do you remember -- so we've heard talk about two

1 different people getting beaten, right?

2 A. Yes.

3 Q. And who were the two people getting beaten?

4 A. Tigre and Master.

5 Q. Okay. Why is Tigre being beaten?

6 A. Because he had been put on the wagon, so he wasn't allowed
7 to drink alcohol and he started drinking, and that's why we
8 were going to correct him for disrespecting the clique.

9 Q. Why was Master being beaten?

11:31AM 10 A. Because it had been a while that Master had disappeared
11 and we hadn't heard from him and he wasn't checking in with the
12 clique.

13 Q. All right. What happens after this introduction? Where
14 do you and the other members of the clique go?

15 A. I don't understand.

16 Q. Does the beating happen?

17 A. Yes.

18 Q. Where do you do the beating?

19 A. We were outside of the garage, and all the dudes make a
11:32AM 20 circle when we were at the meeting, and so then the runner says
21 who goes first, who they're going to correct, and the runner
22 says who is going to do the beating of the person that's going
23 to be beaten and tells the person that's going to be beaten to
24 step into the center of the circle. And then he gets beaten
25 for 13 seconds.

1 MR. POHL: Jurors on page 3.

2 Casper: "Ready? 1."

3 CW-1: "Wait, wait, Bro."

4 Casper: "1."

5 CW-1: "Wait, man. Oh, man, exactly, man."

6 Casper: "1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13."

7 CW-1: "That's it, man, stand up, stand up man, with
8 the boots the two guys. I'll break them in."

9 Casper: "Every mistake one makes, he will get a
11:34AM 10 beating."

11 Tigre: "No problem. Yes, homie, but be careful where
12 you hit."

13 CW-1: "Just cover your face, homie."

14 Casper: "Lobo, Checha, (unintelligible)."

15 Can you tell the jury -- were you present for this?

16 A. Yes.

17 Q. Can you tell the jury what happened when that beating
18 occurred?

19 A. First Tigre got the beating, first he was corrected and
11:34AM 20 then Master stepped into the same place where Tigre had been
21 and also to be corrected.

22 Q. So on the transcript, it goes on.

23 Casper: "Ready, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11,
24 12, 13, stop. Stop now. Hey pick him up, dude. He has no
25 air. Pick him up. Come up here."

1 Muerto: "Jump. Jump."

2 That's the second beating?

3 A. Yes.

4 Q. And have you listened to a recording of that beating
5 before your testimony here today?

6 A. Yes.

7 MR. POHL: Can I have 29, please.

8 Q. I'm going to play just a portion of this and see if you
9 remember it.

11:35AM 10 MR. POHL: Just for the witness.

11 (Video played.)

12 Q. Do you recognize this, Mr. Hernandez Miguel?

13 A. Yes, since it was dark there, you can't see anything where
14 we were.

15 Q. Okay. Was this when the beatings happened?

16 MR. MURPHY: Objection, your Honor.

17 THE COURT: Overruled.

18 A. Yes.

19 MR. POHL: Your Honor, I would offer 28 -- excuse me,
11:36AM 20 29 and I'd ask for permission to publish it.

21 THE COURT: All right. 29, admitted.

22 (Exhibit No. 29 received into evidence.)

23 Q. I'm going to pause there for a second. You can't see it,
24 it's dark. Who was that that got beaten, Mr. Hernandez Miguel?

25 A. Tigre.

1 (Video played.)

2 Q. Did you just hear the names Lobo and Checha?

3 A. Yes.

4 Q. What were Lobo and Checha doing -- did you see -- who
5 administered the beating of Tigre?

6 A. Rebelde, Negro, and I don't remember the other one.

7 Q. How does the clique decide who is the person that does the
8 beatings?

9 A. The person that decides that is the runner.

11:39AM 10 Q. Okay. So when you heard the names Lobo and Checha, after
11 that first beating, do you know what was happening there?

12 A. Yes.

13 Q. What was happening?

14 A. The runner is giving the order that Lobo and Checha are
15 the ones that are going to beat to correct Master. There has
16 to be one more, but I don't remember who it was.

17 (Video played.)

18 MR. MURPHY: May we approach, your Honor?

19 THE COURT: All right.

11:42AM 20 (THE FOLLOWING OCCURRED AT SIDEBAR:)

21 THE COURT: Yes.

22 MR. MURPHY: Your Honor, two things. First I'd ask
23 the Court to give an instruction that assault and battery
24 assuming that that is what this is given the possibility of
25 consent is also not a racketeering act. That's Number 1.

1 Second, we're about to approach the area of the
2 transcript where the interpretation was disputed, and I would
3 ask the Court to give an instruction that the Court has
4 previously instructed the jury that the transcripts are the
5 evidence with respect to that the Court -- when we get to that
6 point instruct the jury that they should consider all of the
7 evidence they've had heard of the meeting in deciding what the
8 transcripts, what weight to give about the government's
9 interpretation of the transcripts, the government's version of
11:43AM 10 the transcript.

11 THE COURT: All right. Does the government have a
12 view on either one of those?

13 MS. LAWRENCE: I don't think it's necessary to
14 instruct them assault is not a racketeering act. I don't think
15 that's how the evidence is coming in.

16 THE COURT: My concern is -- the only reason I'm
17 hesitating at all is -- because "assault" is a word with many
18 meanings, including assault with intent to kill, I think which
19 is a racketeering act, so I think I'm going to let it go for
11:43AM 20 now. I take the point but -- and I will give the -- so I won't
21 do that now.

22 I'll be prepared to talk about it in the final
23 instructions to make clear, you know, a more simple assault or
24 simple assault and battery is not a racketeering act, and
25 they're not charged with that, and I will give a reminder at

1 the -- when we get to that part of the transcript.

2 MR. MURPHY: Thank you, your Honor.

3 (SIDEBAR CONFERENCE WAS CONCLUDED)

4 THE COURT: All right. Go ahead, Mr. Pohl.

5 MR. POHL: Can I have 31 for the witness, excuse me,
6 31.1 and 31.2.

7 Q. Do you see that picture, Mr. Hernandez Miguel?

8 THE COURT: You can move the screen.

9 THE INTERPRETER: Not really.

11:45AM 10 THE COURT: Oh, you can't, okay.

11 A. Oh, yes. I can see it now.

12 Q. Do you recognize that person?

13 A. That's Lobo.

14 Q. And .2. Do you recognize that person?

15 A. Playa.

16 Q. Were Lobo and Playa present when Master and Tigre were
17 beaten?

18 A. Yes.

19 MR. POHL: I'd offer those, your Honor, and ask for
11:45AM 20 permission to approach.

21 THE COURT: All right. They're admitted, 30.1 and
22 30.2.

23 MR. POHL: Thank you.

24 (Exhibit No. 30.1 and 30.2 received into evidence.)

25 Q. Who's that?

1 A. Lobo.

2 Q. .2?

3 A. Playa.

4 Q. All right.

5 MR. POHL: I'm going to turn back to the transcript,
6 ladies and gentlemen, on tab 28. If you could go to the middle
7 of page 4.

8 THE COURT: Before we do another reading, let me
9 remind you, ladies and gentlemen, that this is the evidence put
10 on by the government as to what these transcripts -- or what
11 the conversations were translated into English, and there may
12 be disputes about either who was speaking or whether the
13 translation is accurate, and you're to consider all of the
14 evidence, whatever that evidence is, and you are the ones who
15 make the determination if there's a dispute as to who the
16 speaker is or what the word means or how to resolve that.

17 Go ahead, Mr. Pohl.

18 MR. POHL: Thank you very much, your Honor.

19 Q. The middle of page 4, there's a quote from Casper:

11:47AM 20 The problem is that we didn't reach an agreement with
21 them, dude."

22 Actually, I should begin with the sentence above.

23 Checha: "What about the issue from the thing down
24 below?"

25 Then Casper: "The problem is that we didn't reach an

1 agreement with them, dude. They kept wanting to make decisions
2 for up here and they can't be because nobody is going to pilot
3 us here without knowing what type of car they are driving, you
4 know. I explained that we are fine, homeboy. There are many,
5 there are many of us who have killed, homie and we deserve
6 their respect and not to have them trying to pilot us. We are
7 established here, and we are the ones who have to make our own
8 decisions, not them down below, so we are out of the program
9 right now."

11:48AM 10 "So what are we going to do now," says Master.

11 Excuse me, Master.

12 Master: "Another thing is that talking here with all
13 the cliques about how many cliques are there, about six cliques
14 here in Boston. So if we all agreed, we could set up a
15 program."

16 Casper: "We already did that, dude. We tried to
17 reach an agreement with the cliques there. There's that
18 homeboy Playa who is a witness to that. They said that yes,
19 that we will establish our own rules up here. The thing is
11:48AM 20 that when they are start getting pissed off down there, those
21 rages down there make the dudes up here change their minds, and
22 there are a lot of cliques, dude, with guys that are here of
23 Enfermos that start here with the therapy from down there and
24 change their minds. We had an argument with Crazy about that.
25 I argued with him, homeboy. So the other day I met with the

1 TLS homeboys, I met with the Psychos, dude, I met with the
2 dudes from here. What's their name, TLS, psychos."

3 Playa: "Everetts."

4 Casper: "Yes, Everetts. We didn't reach an
5 agreement. So yeah the dudes -- I don't know how their mind
6 works, dude, because here in this circle they say, yes, that's
7 good. We'll do it like that. In the end from down below, they
8 change how they think. You must know how the therapy down
9 below is, so that's why we haven't come to an exact firm point
10 that we are going to be with them that way."

11:49AM

11 All right. Mr. Hernandez Miguel, you were present for
12 this conversation, correct?

13 A. Yes.

14 Q. All right. So, what was the Eastside clique talking about
15 here concerning the East Coast Program?

16 A. It's saying that the clique isn't going to remain in the
17 program any longer.

18 Q. And I think you testified earlier that MS-13 has many
19 programs?

11:50AM

20 A. Yes.

21 Q. And have you ever heard of their word "Hollywood"?

22 A. Yes.

23 Q. Okay. And specifically in connection with MS-13, does
24 that word mean anything to you?

25 A. Yes.

1 Q. What does it mean to you in connection with MS-13?

2 A. The Hollywood clique has its own program.

3 Q. Are there other programs that you know as a member of
4 MS-13?

5 A. I've also heard of the L.A. program.

6 MR. POHL: All right. Jurors, can I ask you to turn
7 to page 6. Thank you.

8 Q. At the bottom of page 6 begins:

9 Casper: "Hey, Lobo."

11:51AM 10 Lobo: "Yes."

11 Casper: "The thing about the gun, homie, the dudes
12 told me that you're giving it back and that the homies want it
13 with the clip just as it was when you lost it."

14 Muerto: "In my opinion, it would be better if he
15 keeps that gun and get a good gun instead for clique because
16 that gun you knew that it didn't work and you brought it like
17 that just to say you brought something."

18 Lobo: "No, because I might get a clip."

19 Muerto: "But how much does the clip cost? We were
11:52AM 20 researching that the other day. It costs about \$300 just for
21 the clip."

22 Tigre: "It would be better to get a different gun."

23 Muerto: "And you don't know if that thing works.
24 What if you buy a chifle and the thing doesn't work?"

25 Lobo: "Will you give me time to look for it?"

1 Muerto: "Yes, but pay attention. How can you bring a
2 gun with a thing like that?"

3 Casper: "Try to get it as quickly as possible because
4 the dudes need it, homebody."

5 Lobo: "I'll try to find one as quickly as possible."

6 Can you explain that -- what did they mean that Lobo
7 had to bring another gun, what did they mean by that?

8 MR. IOVIENO: Objection, your Honor.

9 THE COURT: Sustained. Again, he can talk about his
11:53AM 10 understanding, he can say what was said, and he can talk about
11 his understanding of what was said, but he can't say what
12 somebody meant when they said something.

13 Q. So Mr. Hernandez Miguel, did -- after Lobo was arrested
14 with the gun, did he replace it?

15 A. Yes.

16 Q. Okay. What did he replace it with?

17 A. With another 9 millimeter, but the problem was it had no
18 clip. So why I said there why -- how could you bring a gun
19 without a clip for the gun --

11:53AM 20 THE INTERPRETER: For the clique, I'm sorry.

21 A. To bring a gun like that to the clique was a disrespecting
22 of the clique, and that he had to also get the clip.

23 Q. I think you talked about Hollywood and the Hollywood
24 Program. Did you and the members of the Eastside clique talk
25 about joining the Hollywood program?

1 MR. MURPHY: Objection, your Honor, time frame.

2 THE COURT: Why don't you put a time frame on it.

3 Q. Mr. Hernandez Miguel, this transcript, this conversation,
4 was from October 24, 2015. Was there a time after that
5 conversation but before you were arrested that you talked about
6 joining another MS-13 program?

7 A. Yes.

8 Q. Okay. What MS-13 program did you talk about joining?

9 A. To the Hollywoods.

11:55AM 10 Q. And when did you talk about that? Excuse me, where did
11 you talk about that?

12 A. At the meeting we talked about that.

13 Q. Okay. At the garage?

14 A. Yes.

15 Q. Who was present for that meeting?

16 A. Casper, Playa, Lobo, Checha, myself, Pelon, Brujo, Duke,
17 and others I don't recall.

18 Q. I think you identified -- can we have
19 Exhibit Number -- this is Exhibit 9 that's in evidence. Who is
11:56AM 20 that?

21 A. Animal.

22 Q. Do you remember when you met Animal?

23 A. Yes.

24 Q. When was that?

25 A. One day I spoke to Animal because he had gone to

1 New Jersey.

2 Q. Okay. How did you speak to him?

3 A. Over the phone.

4 Q. Okay. And do you remember when the first time you met him
5 was? I don't mean the exact day, but how you met him, where
6 that was?

7 A. I don't remember.

8 Q. Okay. Can we -- I'm going to play you what's been
9 previously admitted into evidence as 104.

11:57AM 10 (Video played.)

11 Q. I'll just pause it there. Do you know who that person is
12 in the front, in the passenger seat?

13 A. Yes.

14 Q. Who is that?

15 A. Animal.

16 Q. Okay. And did you review this recording prior to your
17 testimony?

18 A. Yes.

19 Q. And did you go through the same process of describing the
11:58AM 20 speakers that you've testified to previously?

21 A. Yes.

22 Q. And besides Animal, do you remember whether there was
23 somebody else in the car that spoke?

24 A. Yes.

25 Q. Do you remember who that was?

1 A. It was -- Pelon was there and David.

2 Q. Okay. Who's David?

3 A. He was one that was with Animal.

4 Q. What do you mean with Animal?

5 A. Animal went around with about three kids. They were
6 always with David.

7 THE INTERPRETER: Excuse me, they were always with
8 Animal.

9 A. And they were always out looking for chavalas.

11:59AM 10 MR. MURPHY: Objection, your Honor, may that be
11 stricken?

12 THE COURT: All right. The last phrase "they were
13 always out looking" will be struck.

14 MR. POHL: Your Honor, I believe that transcript 103
15 had already been admitted de bene. I'd move it now formally
16 for all purposes.

17 THE COURT: All right. It's admitted, 103.

18 (Exhibit No. 103 received into evidence.)

19 THE COURT: Does it make sense to take our break now?

12:00PM 20 THE CLERK: All rise.

21 (A recess was taken.)

22 THE CLERK: All rise for the jury.

23 (JURORS ENTERED THE COURTROOM.)

24 THE CLERK: Thank you. You may be seated. Court is
25 now back in session.

1 THE COURT: Mr. Pohl.

2 MR. POHL: Thank you, your Honor.

3 This is for the witness only at this time. Thank you.
4 I'm sorry, I take it back. 107 is in evidence. Can we play
5 107.

6 (Video played.)

7 MR. LOPEZ: I don't know that that was admitted
8 yesterday.

9 THE CLERK: I have 107 admitted actually on
10 February 2nd.

11 MR. LOPEZ: Okay, my mistake.

12 Q. All right. Mr. Hernandez Miguel, did you listen to that
13 recording before your testimony here today?

14 A. Yes.

15 Q. And had you gone through the process of reviewing that
16 recording with the interpreter and the agents in the way you
17 previously testified?

18 A. Yes.

19 Q. Do you recognize the voices on that recording?

12:17PM 20 A. Yes.

21 Q. Who was speaking on that recording?

22 A. Pelon, Casper, and Animal.

23 MR. POHL: Your Honor, as before I think 107 had
24 previously been admitted de bene, I'd move it now. Excuse me,
25 106.

1 THE COURT: Wait, I'm sorry.

2 MR. POHL: 106 is the transcript, 107 is the
3 recording. I'd move 106 into evidence. I'm sorry, Lisa.

4 THE COURT: Okay. All right. 106 is admitted.

5 (Exhibit No. 106 received into evidence.)

6 THE COURT: Go ahead.

7 Q. Putting up what's been marked as 108, do you recognize
8 that photograph?

9 A. Yes.

12:18PM 10 Q. Who is that?

11 A. Casper.

12 Q. You said before the break that Animal was in New Jersey?

13 A. Yes.

14 Q. How do you know Animal was in New Jersey?

15 A. I spoke to him.

16 Q. Okay. Did you ever -- do you know why he was in
17 New Jersey, from your conversations with Animal, why he was in
18 New Jersey?

19 A. Yes.

12:19PM 20 Q. Why was he in New Jersey?

21 A. Because he had committed a murder in East Boston.

22 Q. When you spoke to Animal, did you know what clique he was
23 with at the time he committed the murder?

24 A. Yes.

25 Q. What clique was that?

1 A. With the Everett locos.

2 Q. Okay. And do you know from your conversations with Animal
3 why he went to New Jersey after the murder?

4 A. Yes.

5 Q. Why was that?

6 A. Because since he had committed the homicide, Animal said
7 that all chavalas knew him and so the Everetts took him to
8 New Jersey.

9 Q. Do you know what happened to Animal -- well, did you ever
12:21PM 10 see Animal in New Jersey?

11 A. Yes.

12 Q. Okay. When did you see Animal in New Jersey?

13 A. Myself and Pelon went to pick Animal up in New Jersey.

14 Q. Okay. Why did you and Pelon go to New Jersey to pick up
15 Animal?

16 A. Because Animal told me that he had spoken with Casper to
17 ask him if he would allow him to run with the Eastside clique.

18 Q. And did Animal tell you what Casper said?

19 A. That he needed to come back to Boston to get to know the
12:22PM 20 dudes in the clique and then if he liked how the vibe was in
21 the clique, then he could say yes.

22 Q. So is that why you went to New Jersey?

23 A. Yes.

24 Q. Okay. Do you remember where you went in New Jersey?

25 A. I don't remember.

1 Q. Okay. What happened when you got to New Jersey?

2 A. We went, we got to New Jersey to Animal's house and came
3 back to Boston.

4 Q. Okay. Did Animal talk about the murder on the way -- that
5 he had committed on the way back to Boston?

6 THE INTERPRETER: Can you repeat the last part,
7 please.

8 Q. I've lost my voice, excuse me. Did Animal talk about the
9 murder that he committed as you were driving him back from
10 New Jersey to Boston?

12:23PM

11 A. Yes.

12 Q. What did Animal tell you about the murder he committed in
13 East Boston?

14 A. That he had done it.

15 Q. Okay. Did he tell you where it had happened?

16 A. Yes.

17 Q. Where was that?

18 A. On Trenton Street.

19 Q. Okay. And did he tell you anything about sort of how the
20 murder had been committed?

12:23PM

21 A. Yes.

22 Q. What did he tell you?

23 A. That Animal, David, and others were hanging out at a house
24 where they used to hang out in Everett and then they said that
25 they were going to go out and look for chavalas.

1 Q. Can I stop you right there? I think Ms. Huacuja said that
2 it was a house that they used to hang out in an Everett. Is
3 that right?

4 A. Sorry, of the Everett clique.

5 THE INTERPRETER: The interpreter misstated.

6 Q. It was a house where the Everett clique used to hang out?

7 A. Yes.

8 Q. And where was that house that the Everett clique used to
9 hang out in?

12:24PM 10 A. On White Street near the East Boston.

11 Q. Okay. All right. So they were hanging out at the Everett
12 house on White Street in East Boston, then what happened?

13 A. They said they were going to walk and look for chavalas.
14 Animal said he had a knife on him, and as they were walking
15 down the street, they decided to divide and part of them go one
16 way and the other part go a different way.

17 Animal was with David, and he said that the part where
18 he went, they saw two chavalas walking, and Animal said that he
19 already knew them and that they were chavalas. So he said that
12:26PM 20 he crossed the street to the side where the chavalas were
21 walking and that he flashed the MS signs, and that both of them
22 took off running.

23 One went into a laundromat, and the other one he said
24 that he caught him, and when he caught him, the two of them
25 stood to fight, and Animal stabbed him with a knife. He said

1 he stabbed him about three times, something like that, and that
2 he saw when the chavala starting falling to the ground and he
3 would try to stand up and he kept bending over because he was
4 bleeding a lot, a lot of blood, and the chavala said something
5 to him, he said, something to the effect of you'll be sorry.

6 Q. After you brought Animal back from New Jersey, did you and
7 the members of the Eastside clique spend time with him?

8 A. Yes.

9 Q. About how much time -- well, you remember when you were
12:27PM 10 arrested, right?

11 A. Yes.

12 Q. Maybe not the exact date, but how long had you been
13 spending time with Animal up until the point in time in which
14 you were arrested?

15 A. Approximately one month or a month and a half.

16 Q. Okay. And did you spend time with him?

17 A. Yes.

18 Q. What about other members of the Eastside clique?

19 A. Also.

12:28PM 20 Q. Okay. Like who?

21 A. Well, Vincentino since Animal didn't have a house to live
22 in, we spoke to Vincentino to give him a place to stay, and we
23 started bringing him over to where the dudes were hanging out
24 so that he could start getting to know the Eastside members.

25 Q. I think you testified earlier that Animal had a couple

1 people that hung around with him, correct?

2 A. Yes.

3 Q. Do you remember their names?

4 A. I know there was one that was called Luis, David and about
5 two more that I don't remember.

6 Q. Okay. When you hung around with Animal, did you see
7 David, Luis, the other two friends of Animal's that you
8 described?

9 A. Yes, I did see them but not much.

12:30PM 10 Q. Did you and the other -- did you discuss with members of
11 the Eastside clique whether to make Animal a homeboy in your
12 clique?

13 A. I didn't understand the question.

14 Q. Sure. Well, let me -- was Animal made a homeboy in your
15 clique?

16 A. Yes.

17 Q. Was the decision to make him a homeboy something that you
18 discussed with other members of the Eastside clique?

19 A. Yes.

12:30PM 20 Q. Okay. Who?

21 A. The runners and the clique.

22 Q. What about you, did you want Animal to become a member of
23 the Eastside clique?

24 A. Yes.

25 Q. Was there anything -- did you have any conversations with

1 Animal after you brought him back from New Jersey concerning
2 any violent crimes that he committed back up here in Boston?

3 A. Yes.

4 Q. Did Animal talk to you about that?

5 A. Yes.

6 Q. Okay. What did he tell you?

7 A. That he had also committed an attempted murder in Chelsea.

8 Q. Did he tell you who he did that with?

9 A. Yes.

12:32PM 10 Q. With who?

11 A. With Brujo.

12 Q. Okay. What did he tell you about it?

13 A. That one day they were at Dondeney's house in Everett and
14 that they went to Chelsea in a van that belongs to someone
15 named Mercho. It was Animal and about three others, and there
16 was a girl called Rina and that they had committed an attempted
17 murder near a restaurant called Santa Negro. He said that they
18 were in the van when they saw the boys walking and they knew
19 them already well.

12:33PM 20 So they told Muerto to stop the van, and they jumped
21 out of the car. It was Brujo, Animal, and the other two were
22 the ones that would hang out with Animal, and he said that they
23 started following the chavalas and one tried to run towards the
24 park and they grabbed him there and Brujo said that he stabbed
25 him with a knife.

1 Q. Did you talk about the fact that he had done that stabbing
2 with other members of the Eastside clique?

3 A. Yes.

4 Q. Did you discuss that stabbing when you were discussing
5 whether to make Animal a member?

6 A. Brujo spoke about that.

7 Q. Okay. And what did Brujo say?

8 A. That they had grabbed some chavalas in Chelsea, he and
9 Animal, and that Animal had balls.

12:35PM 10 THE COURT: I'm sorry, he had said that Muerto was
11 driving the van? Is there a different Muerto?

12 THE WITNESS: Mercho.

13 THE COURT: Mercho.

14 THE INTERPRETER: It's M-e-r-c-h-o.

15 THE COURT: Thank you.

16 Q. After those conversations, did Eastside jump Animal into
17 the clique?

18 A. Yes.

19 Q. So at the time he committed the murder, Animal was in the
12:35PM 20 Everetts?

21 A. Yes.

22 Q. And you spoke with him after he committed the murder?

23 A. When he was in New Jersey, I spoke with him.

24 Q. Yes, right. Did Animal tell you why he was not jumped
25 into the Everett clique?

1 A. Yes.

2 Q. Why was that?

3 A. Because when Animal got to Boston, he said that he didn't
4 know dudes from MS-13, so he started hanging with some 18s, and
5 that one day he was walking with some 18s from Chelsea to East
6 Boston and that the 18s had Animal beat some dudes from the
7 Everetts. That's why the Everetts didn't want to jump Animal
8 because first they had to resolve that problem.

9 Q. They weren't sure he was really MS?

12:37PM 10 MR. MURPHY: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. All right. After the stabbing that you've talked about
13 with Animal and Brujo, was Animal jumped into the Eastside
14 clique?

15 A. Yes.

16 Q. Were you present for that jump-in?

17 A. Yes.

18 Q. Who else was at the jump-in?

19 A. Casper, Playa, Brujo, Vago, Negro and others. I don't
12:38PM 20 remember.

21 MR. POHL: Can I have 32.3. For the witness only,
22 Madam Clerk.

23 Q. This goes on for another minute or two, Mr. Hernandez
24 Miguel, but as I'm playing this, do you remember this?

25 A. Yes.

1 Q. Where is this?

2 A. That's at the garage in Everett.

3 Q. Okay. Do you remember what -- is it fair to say these are
4 parts of a longer video?

5 A. Yes.

6 Q. Do you remember the day that this meeting happened?

7 A. Yes.

8 Q. What happened on that day?

9 THE INTERPRETER: I'm sorry?

12:39PM 10 Q. What happened on that day;

11 A. It was to jump Animal in.

12 MR. POHL: Your Honor, I would offer 32.3 and ask to
13 publish it to the jury.

14 THE COURT: All right. It's admitted, 32.3.

15 (Exhibit No. 32.3 received into evidence.)

16 Q. Who is that?

17 A. What's the question?

18 Q. Were you watching the video just then?

19 A. Yes.

12:40PM 20 Q. Who was that?

21 A. Lobo.

22 (Video played.)

23 Q. Who was that?

24 A. Playa and Vincentino was there with a white baseball cap.

25 (Video played.)

1 Q. Who is that?

2 A. Brujo.

3 (Video played.)

4 Q. There were a couple of people in that section of the
5 video, Mr. Hernandez Miguel. Did you recognize them?

6 A. Yes.

7 Q. Who was there?

8 A. Casper and Checha.

9 (Video played.)

12:42PM 10 Q. Who was that?

11 A. That was Casper and Caballo.

12 MR. POHL: Can I have 33.1 through 5 for the witness.

13 Q. I'm going to show you a series of pictures quickly,
14 Mr. Hernandez Miguel. Do you recognize these?

15 A. Yes.

16 Q. Who is that?

17 A. Casper.

18 Q. 2, who is that?

19 A. Playa and Vincentino.

12:43PM 20 Q. And just to be clear, Playa is where?

21 A. In the corner with a black baseball cap. Vincentino is
22 wearing the white baseball cap.

23 Q. 3, who is that?

24 A. Lobo.

25 Q. 4, who is that in the knit cap?

1 A. That's Brujo.

2 Q. 5, who is that?

3 A. Checha is wearing the yellow sweater.

4 MR. POHL: Your Honor, I'd offer these and ask to
5 quickly punish them.

6 THE COURT: 33.1 through 33.5 are admitted.

7 (Exhibit No. 33.1 through 33.5 received into
8 evidence.)

9 Q. 33.1, who is that?

12:44PM 10 A. Casper.

11 Q. Who is that in the black hat?

12 A. Playa.

13 Q. Who is that in the white shirt?

14 A. Lobo.

15 Q. Who is that in the knit cap?

16 A. Brujo.

17 Q. Who is that in the yellow sweatshirt?

18 A. Checha.

19 Q. Were you present for the actual jump-in of Animal in the
12:44PM 20 garage that night?

21 A. Yes.

22 Q. Do you remember who was selected to beat Animal in?

23 A. Yes.

24 Q. Who was that?

25 A. Vago and Brujo and I don't remember the other one.

1 Q. And do you remember who selected the people to beat Animal
2 in?

3 A. Yes.

4 Q. Who was that?

5 A. Casper.

6 Q. Why did Casper select him?

7 A. Because he's the runner and so he's the one that decides
8 who is going to jump the person who is coming in, who is going
9 to jump him in. Only runners can decide that.

12:46PM 10 MR. POHL: Can I have 32.2.

11 Q. Mr. Hernandez Miguel, do you remember that night, the
12 night that Animal got jumped in?

13 A. Yes.

14 Q. Do you remember who counted for the beating that night?

15 A. Yes.

16 Q. Who was that?

17 A. Playa.

18 MR. POHL: I'm going to ask for permission to Play
19 32.2.

12:46PM 20 THE COURT: Is it in?

21 MR. POHL: Yes, it's in.

22 THE COURT: All right. Go ahead.

23 (Video played.)

24 Q. All right. What are we seeing here?

25 A. Animal is standing in the foreground, and behind him is

1 Vago in what appears to be a white sweater.

2 (Video played.)

3 Q. Okay. Just so we're clear, we heard counting, "Uno, dos
4 tres," who was that?

5 A. Playa.

6 (Video played.)

7 Q. Do you see that?

8 A. Yes.

9 Q. What was that?

12:48PM 10 A. He's flashing MS, Animal is flashing MS because he's happy
11 to have been jumped into MS.

12 MR. POHL: Can I have 49.2.

13 Q. We talked about this a little bit at the very beginning of
14 your testimony, Mr. Hernandez Miguel, but do you recognize this
15 document?

16 A. Yes.

17 Q. And this is an agreement between the government and you,
18 correct?

19 A. Yes.

12:49PM 20 Q. Okay. And under the terms of the agreement, in your own
21 words, what are you required to do?

22 MR. MURPHY: Objection, your Honor.

23 THE COURT: We've been over this, haven't we?

24 Q. I want to ask you about a particular part of your
25 cooperation agreement. And do you remember -- Ms. Huacuja is

1 going to read that to you to yourself.

2 Ms. Huacuja just read you that paragraph?

3 A. Yes.

4 Q. Part of the agreement that you signed, correct, is that
5 you have to testify, correct?

6 A. Yes.

7 Q. And you have to testify truthfully, correct?

8 MR. MURPHY: Objection, your Honor.

9 THE COURT: I'll allow that.

12:52PM 10 A. Yes.

11 Q. Okay. And in exchange, the government has made promises
12 to you, correct?

13 A. Yes.

14 Q. And one of those promises concerns this paragraph, right?
15 Now Ms. Huacuja read it to you.

16 A. Yes.

17 Q. Do you understand what that paragraph means?

18 A. Yes.

19 Q. And in your own words, what does that paragraph mean to
12:53PM 20 you?

21 A. Well, what I understand from that paragraph is that if the
22 information that I'm giving is correct, because what the
23 government has asked of me is that I tell the truth, and that's
24 what I have done.

25 Q. Okay. Let me ask you this question. As a result of your

1 testifying here today, what consequences do you believe you
2 will face from MS-13?

3 MR. IOVIENO: Objection.

4 THE COURT: I will allow that. It's based on his
5 understanding, obviously.

6 THE INTERPRETER: Can you repeat the question, please?

7 MR. POHL: Sure.

8 Q. As a result of your testimony, what do you think MS-13
9 will do to you?

12:54PM 10 MR. LOPEZ: Objection, your Honor.

11 MR. IOVIENO: Objection.

12 THE COURT: Hold on. I'll allow it again. I will
13 allow the witness to testify as to his understanding of
14 possible consequences. Go ahead.

15 A. The rules of the Mara Salvatrucha is that when a member of
16 the gang testifies against a different member, they will put a
17 green light on him and kill him and also kill his family.
18 That's what MS-13 does when someone testifies, as I have done.
19 All I can say is that if something happens to my family, it
12:55PM 20 will be their fault.

21 MR. IOVIENO: Objection.

22 MR. LOPEZ: Objection.

23 THE COURT: Strike that last sentence.

24 Mr. Pohl.

25 MR. POHL: Thank you, your Honor. Can I have one

moment, your Honor?

THE COURT: Yes.

MR. POHL: Thank you, Mr. Hernandez Miguel.

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C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing transcript was recorded by me stenographically at the time and place aforesaid in Criminal Action No. 15-10338-FDS, UNITED STATES vs. HERZZON SANDOVAL, et al., and thereafter by me reduced to typewriting and is a true and accurate record of the proceedings.

Dated this 8th day of February, 2018.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER